on the recovery of wagers by a party who "repents" before the event happens and demands back his wager. Under such circumstances, where the betting is not a crime, the repentant party may maintain an action to recover the money.[11] Since the effect of the various subdivisions of the statute is to make all betting where a stakeholder is employed a crime, and in other cases to prohibit betting in all but the comparatively few instances mentioned above, the result will be a great decrease in the number of cases in which the Court will aid a repentant party in the recovery of his wager.

T. J. L.

Criminal Law: Jeopardy; Illness of Judge.—When a judge is taken ill during the trial of a criminal case and becomes unable to proceed, the usual course is to discharge the jury. The defendant can be tried again, since the failure to return a verdict in the former trial is due to an unavoidable cause.[1] If, however, on the illness of a judge, the defendant is willing to have another judge called in and proceed with the same trial, there is no reason why this course should not be pursued. In fact unless the record shows that the defendant objected to the substitution of judges, error will not be presumed.[2] It is true that the judge who is called in after the trial has progressed for some time is not in such a good position to rule on the evidence or pass on the motion for a new trial, but these difficulties may be obviated to a certain extent by recalling the witnesses or reading the testimony to the judge. As a choice of evils a continuation of the trial before the same jury and another judge would seem in general preferable to a new trial. So it must have appeared to the legislature when in 1911 it provided for the substitution of a judge even without the defendant's consent.[3] The statute, however, is clumsily worded and in counties where there is more than one judge, seems to require the calling in of a judge from the same county. In the principal case[4] on the illness of the judge presiding at the trial in the City and County of San Francisco the parties stipulated to call in a judge from another county. It was properly held that the compulsory procedure of section 1053 of the Penal Code did not prevent the parties from following a different method by stipulation.

A. M. K.

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[11] Gridley v. Dorn, (1880) 57 Cal. 78; Schenck v. Hirshfeld, (September 19, 1913) 17 Cal. App. Dec. 286.

[1] Nugent v. State, (1833) 4 Stewart & Porter 72, 24 Am. D. 746; State v. Ulrich, (1892) 110 Mo. 350 19 S. W. 656.

[2] People v. Henderson, (1865) 28 Cal. 465; People v. Casselman, (1909) 10 Cal. App. 234, 101 Pac. 693. See also People v. Eckert, (1860) 16 Cal. 111; People v. Hobson, (1861) 17 Cal. 424.

[3] California Penal Code, section 1053.

[4] People v. Lichtenstein, (3rd App. Dist. Aug. 18, 1913) 17 Cal. App. Dec. 187; rehearing in Supreme Court denied Oct. 17, 1913.